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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------|------------------------|
| 10/753,860 | 01/07/2004 | Craig D. Cuttner | 12510/31 | 6021 |
| 7590 KENYON & KENYON One Broadway New York, NY 10004 | | 03/16/2010 | EXAMINER HONG, HYUN J | |
| | | | ART UNIT 2426 | PAPER NUMBER |
| | | | MAIL DATE 03/16/2010 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

***Advisory Action
Before the Filing of an Appeal Brief***

Application No.

10/753,860

Applicant(s)

CUTTNER ET AL.

Examiner

Hyun J. Hong

Art Unit

2426

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 01 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See *Continuation Sheet* (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1, 3-24 and 26-36.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicant argues that Needham does not disclose displaying previously recorded programs in a listing. Examiner respectfully disagrees. Needham teaches that the transmission system is capable of determining whether the program has been stored on a secondary PVR (00191). Therefore, information regarding a previously and locally stored program is received. Figure 1 of Needham shows an EPG display that presents past, present and future programs to a user. There is no teaching in Needham that states that a recorded program is deleted from the EPG; thus a previously recorded program will be displayed by the EPG shown in fig. 1. Applicant also argues that Ellis in view of Needham does not disclose the single list of recommended titles. Examiner respectfully disagrees. Claim 1 merely states that a "single list of recommended titles" is displayed. A listing of recommended titles (as shown in fig. 16b of Ellis) in conjunction with a listing of previously recorded programs (fig. 1 of Needham) can still be interpreted to represent a list of recommended titles, since there are recommended titles present in said listing. The present claim 1 does not require a recommended title to come specifically from the group of previously recorded programs. Regarding claim 23, the Hendricks reference discloses displaying an advertisement based upon a priority of a programming provider (fig. 16, 17). This priority display of ads is a feature that is incorporated into the second list (selectable advertisement) of Ellis by the combination of the Ellis and Hendricks references.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Joseph P. Hirl/
Supervisory Patent Examiner, Art Unit 2426
March 13, 2010

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06)

Advisory Action Before the Filing of an Appeal Brief

Part of Paper No. 20100310

Continuation of 3. NOTE: Amendments to claims 20, 30 present new issues ("displaying a single filter bar...") that will require further search/consideration.